

Cynthia Z. Levin, Esq.
Law Offices of Todd M. Friedman, P.C.
1150 First Avenue, Suite 501
King of Prussia, PA 19406
Phone: 888-595-9111 ext 618
Fax: 866 633-0228
clevin@attorneysforconsumer.com
Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

EARL MARKEY AND FATU	)	Case No.
BADIANE MARKEY, individually	)	<u>CLASS ACTION</u>
and on behalf of all others similarly)	
situated,	)	COMPLAINT FOR VIOLATIONS
	)	OF:
Plaintiffs,	)	1. NEGLIGENT
	)	VIOLATIONS OF THE
vs.	)	TELEPHONE CONSUMER
	)	PROTECTION ACT [47
	)	U.S.C. §227 ET SEQ.]
SPARK ENERGY LLC, and DOES 1	)	2. WILLFUL VIOLATIONS
through 10, inclusive, and each of	)	OF THE TELEPHONE
them,	)	CONSUMER
	)	PROTECTION ACT [47
Defendants.	)	U.S.C. §227 ET SEQ.]
)	
	)	<u>DEMAND FOR JURY TRIAL</u>

Plaintiffs, EARL MARKEY and FATU BADIANE MARKEY
("Plaintiffs"), on behalf of themselves and all others similarly situated, allege the
following upon information and belief based upon personal knowledge:

NATURE OF THE CASE

1. Plaintiffs bring this action for themselves and others similarly

1 situated seeking damages and any other available legal or equitable remedies
2 resulting from the illegal actions of Spark Energy LLC (“Defendant”), in
3 negligently, knowingly, and/or willfully placing sales, solicitations and/or other
4 telemarketing calls to Plaintiffs’ residential telephone despite Plaintiffs being
5 registered with the National Do Not Call Registry and in violation of the
6 Telephone Consumer Protection Act, 47. U.S.C. § 227 *et seq.* (“TCPA”), thereby
7 invading Plaintiffs’ privacy.

8 **JURISDICTION & VENUE**

9 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because
10 Plaintiffs, residents of Pennsylvania, seek relief on behalf of a Class, which will
11 result in at least one class member belonging to a different state than that of
12 Defendant, a company organized and headquartered in the state of Texas.
13 Plaintiffs also seek up to \$1,500.00 in damages for each call in violation of the
14 TCPA, which, when aggregated among a proposed class in the thousands,
15 exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore,
16 both diversity jurisdiction and the damages threshold under the Class Action
17 Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.
18

19 3. Venue is proper in the United States District Court for the Eastern
20 District of Pennsylvania pursuant to 18 U.S.C. 1391(b) and 18 U.S.C. § 1441(a)
21 because Defendant does business within the state of Pennsylvania and the
22 Philadelphia County.

23 **PARTIES**

24 4. Plaintiffs, EARL MARKEY AND FATU BADIANE MARKEY
25 (“Plaintiffs”), are natural persons residing in Pennsylvania and are “persons” as
26 defined by 47 U.S.C. § 153 (39).
27
28

1 5. Defendant, Spark Energy LLC (“Defendant” or “Spark”), is a
2 nationwide company providing electricity and natural gas services, and is a
3 “person” as defined by 47 U.S.C. § 153 (39).

4 6. The above named Defendant, and its subsidiaries and agents, are
5 collectively referred to as “Defendant.” The true names and capacities of the
6 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
7 currently unknown to Plaintiffs, who therefore sues such Defendants by fictitious
8 names. Each of the Defendants designated herein as a DOE is legally responsible
9 for the unlawful acts alleged herein. Plaintiffs will seek leave of Court to amend
10 the Complaint to reflect the true names and capacities of the DOE Defendants
11 when such identities become known.

12 7. Plaintiffs are informed and believes that at all relevant times, each
13 and every Defendant was acting as an agent and/or employee of each of the other
14 Defendants and was acting within the course and scope of said agency and/or
15 employment with the full knowledge and consent of each of the other Defendants.
16 Plaintiffs are informed and believe that each of the acts and/or omissions
17 complained of herein was made known to, and ratified by, each of the other
18 Defendants.
19

20 **FACTUAL ALLEGATIONS**

21 8. Beginning in or around October of 2015, Defendant Spark contacted
22 Plaintiffs on their residential home telephone, (267) 761-9427, in an effort to sell
23 or solicit its services.

24 9. Specifically, Defendant Spark, calling from (215) 621-8358, placed
25 telephone calls to Plaintiffs’ home telephone utilizing a pre-recorded message to
26 connect Plaintiffs with Defendant Spark’s representatives.

27 10. Since October of 2015, Defendant Spark has placed no less than
28 twenty-two (22) such telephone calls to Plaintiffs’ residential home telephone,

1 often placing two or more calls per day.

2 11. Plaintiffs are not customers of Defendant Spark services, have never
3 provided any personal information, including their home telephone number, to
4 Defendant for any purpose whatsoever, nor have Plaintiffs purchased or used any
5 goods or services offered by Defendant Spark any time prior to the filing of the
6 instant Complaint. Moreover, Plaintiffs informed Defendant Spark to cease and
7 desist its telemarketing activities on at least three separate occasions.

8 12. Furthermore, Plaintiffs have had their home telephone number of
9 (267) 761-9427 continuously registered with the National Do Not Call Registry
10 since August 26, 2013.

11 13. All calls placed by Defendant Spark to Plaintiffs utilized an
12 “automatic telephone dialing system”, as defined by 47 U.S.C. § 227(a)(1).

13 14. All calls placed by Defendant to Plaintiffs utilized an “artificial or
14 prerecorded voice” as defined by 47 U.S.C. § 227(b)(1)(A).

15 15. Defendant’s calls constituted calls that were not for emergency
16 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

17 16. Defendant never received Plaintiffs’ “prior express consent” to
18 receive calls using an automatic telephone dialing system or an artificial or
19 prerecorded voice on her cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

20
21 **CLASS ALLEGATIONS**

22 17. Plaintiffs bring this action on behalf of themselves and all others
23 similarly situated, as a member of the proposed class (hereafter “The Class”)
24 defined as follows:

25
26 All persons within the United States who, within the
27 four years prior to the filing of this Complaint, received
28 any sales or solicitation telephone calls from Defendant
to said person’s telephone who had registered said

1 telephone with the National Do Not Call Registry and
2 who had not maintained a business relationship with
3 Defendant within eighteen (18) months of receiving
4 Defendant's calls.

5 18. Plaintiffs represent, and are a member of, The Class, consisting of
6 All persons within the United States who, within the four years prior to the filing
7 of this Complaint, received any sales or solicitation telephone calls from
8 Defendant to said person's telephone who had registered said telephone with the
9 National Do Not Call Registry and who had not maintained a business
10 relationship with Defendant within eighteen (18) months of receiving
11 Defendant's calls

12 19. Defendant, its employees and agents are excluded from The Class.
13 Plaintiffs do not know the number of members in The Class, but believe the Class
14 members number in the thousands, if not more. Thus, this matter should be
15 certified as a Class Action to assist in the expeditious litigation of the matter.

16 20. The Class is so numerous that the individual joinder of all of its
17 members is impractical. While the exact number and identities of The Class
18 members are unknown to Plaintiffs at this time and can only be ascertained
19 through appropriate discovery, Plaintiffs are informed and believe and thereon
20 allege that The Class includes thousands of members. Plaintiffs allege that The
21 Class members may be ascertained by the records maintained by Defendant.

22 21. Plaintiffs and members of The Class were harmed by the acts of
23 Defendant in at least the following ways: Defendant illegally contacted Plaintiffs
24 and Class members via their personal telephones despite Plaintiffs and The Class
25 invoking their rights afforded by the National Do Not Call Registry to be free of
26 unwanted telemarketing calls at their private residences, thus invading the privacy
27 of said Plaintiffs and Class members.
28

1 22. Common questions of fact and law exist as to all members of The
2 Class which predominate over any questions affecting only individual members
3 of The Class. These common legal and factual questions, which do not vary
4 between Class members, and which may be determined without reference to the
5 individual circumstances of any Class members, include, but are not limited to,
6 the following:

- 7 a. Whether, within the four years prior to the filing of this
8 Complaint, Defendant made any sales or solicitation call
9 (other than a call made for emergency purposes or made with
10 the prior express consent of the called party) to a Class
11 member who had registered his or her telephone on the Do
12 Not Call Registry and who did not have a business
13 relationship with Defendant within eighteen (18) months prior
14 to receiving said calls;
15 b. Whether Plaintiffs and the Class members were damaged
16 thereby, and the extent of damages for such violation; and
17 c. Whether Defendant should be enjoined from engaging in such
18 conduct in the future.
19

20 23. As a person that received sales/solicitation calls from Defendant on a
21 telephone number registered with the Do Not Call Registry and who had no
22 previous business relationship with Defendant, Plaintiffs are asserting claims that
23 are typical of The Class.

24 24. Plaintiffs will fairly and adequately protect the interests of the
25 members of The Class. Plaintiffs have retained attorneys experienced in the
26 prosecution of class actions under the Telephone Consumer Protection Act.

27 25. A class action is superior to other available methods of fair and
28 efficient adjudication of this controversy, since individual litigation of the claims

1 of all Class members is impracticable. Even if every Class member could afford
 2 individual litigation, the court system could not. It would be unduly burdensome
 3 to the courts in which individual litigation of numerous issues would proceed.
 4 Individualized litigation would also present the potential for varying, inconsistent,
 5 or contradictory judgments and would magnify the delay and expense to all
 6 parties and to the court system resulting from multiple trials of the same complex
 7 factual issues. By contrast, the conduct of this action as a class action presents
 8 fewer management difficulties, conserves the resources of the parties and of the
 9 court system, and protects the rights of each Class member.

10 26. The prosecution of separate actions by individual Class members
 11 would create a risk of adjudications with respect to them that would, as a practical
 12 matter, be dispositive of the interests of the other Class members not parties to
 13 such adjudications or that would substantially impair or impede the ability of such
 14 non-party Class members to protect their interests.

15 27. Defendant has acted or refused to act in respects generally applicable
 16 to The Class, thereby making appropriate final and injunctive relief with regard to
 17 the members of the Class as a whole.

18 **FIRST CAUSE OF ACTION**

19 **Violations of the Telephone Consumer Protection Act**

20 **47 U.S.C. §227 et seq.**

21 28. Plaintiffs repeat and incorporate by reference into this cause of
 22 action the allegations set forth above at Paragraphs 1-27.

23 29. The foregoing acts and omissions of Defendant constitute numerous
 24 and multiple violations of the TCPA, including but not limited to each and every
 25 one of the above cited provisions of 47 U.S.C. § 227 et seq.

26 30. As a result of Defendant's violations of 47 U.S.C. § 227 et seq.,
 27 Plaintiffs and the Class Members are entitled an award of \$500.00 in statutory
 28

1 damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5)(B).

2 31. Plaintiffs and the Class members are also entitled to and seek
3 injunctive relief prohibiting such conduct in the future.

4 **SECOND CAUSE OF ACTION**

5 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
6 **Act**

7 **47 U.S.C. §227 et seq.**

8 32. Plaintiffs repeat and incorporate by reference into this cause of
9 action the allegations set forth above at Paragraphs 1-31.

10 33. The foregoing acts and omissions of Defendant constitute numerous
11 and multiple knowing and/or willful violations of the TCPA, including but not
12 limited to each and every one of the above cited provisions of 47 U.S.C. § 227 *et*
13 *seq.*

14 34. As a result of Defendant's knowing and/or willful violations of 47
15 U.S.C. § 227 *et seq.*, Plaintiffs and the Class members are entitled an award of
16 \$1,500.00 in statutory damages, for each and every violation, pursuant to 47
17 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

18 35. Plaintiffs and the Class members are also entitled to and seek
19 injunctive relief prohibiting such conduct in the future.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs request judgment against Defendant for the following:

22 **FIRST CAUSE OF ACTION**

23 **Violations of the Telephone Consumer Protection Act**

24 **47 U.S.C. §227 et seq.**

- 25
- 26 • As a result of Defendant's violations of 47 U.S.C. §227, *et seq.*,
27 Plaintiffs and the Class members are entitled to and request \$500.00
28 in statutory damages, for each and every violation, pursuant to 47

1 *U.S.C. 227(c)(5)(B); and*

- 2 • Any and all other relief that the Court deems just and proper.

3 **SECOND CAUSE OF ACTION**

4 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
5 **Act**

6 **47 U.S.C. §227 et seq.**

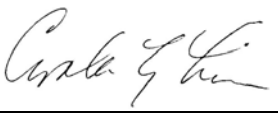
- 7 • As a result of Defendant's willful and/or knowing violations of 47
8 *U.S.C. § 227(b)(1)*, Plaintiffs and the Class members are entitled to
9 and request treble damages, as provided by statute, up to \$1,500, for
10 each and every violation, pursuant to 47 *U.S.C. § 227(b)(3)(B)* and
11 47 *U.S.C. § 227(b)(3)(C)*.
12 • Any and all other relief that the Court deems just and proper.

13 **TRIAL BY JURY**

14
15 36. Pursuant to the seventh amendment to the Constitution of the United States
16 of America, Plaintiffs are entitled to, and demand, a trial by jury.

17
18 Respectfully Submitted this 30th Day of March, 2016.

19 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

20
21 By: 

22 Cynthia Z. Levin, Esq.
23 Law Offices of Todd M. Friedman, P.C.
24 1150 First Avenue, Suite 501
25 King of Prussia, PA 19406
26 Phone: 888-595-9111 ext 618
27 Fax: 866 633-0228
28 clevin@attorneysforconsumer.com
Attorney for Plaintiffs